IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN
S.B. Criminal Appeal No.1022/2003

Nemichand S/o Moola
Versus
The State of Rajasthan through the PP

Date of Judgment :::: 4th May, 2007

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Biri Singh Sinsinwar with
Shri Harendra Singh, and
Shri Kartar Singh, Counsel for accused-appellant
Shri B.N. Sandu, P.P., for the respondent State
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By the Court:-

The matter has come-up for orders on the 3rd Application for Suspension of Sentence on the ground that the appellant has already remained in jail for about four-and-half-year, therefore, his sentence of imprisonment may be suspended during the pendency of the appeal, but, on the request of learned counsel for both the parties, the appeal itself has been heard finally and is being disposed of.

The charge against the accused was that he committed forcible sexual intercourse with Bhagwati, aged about 13 years. The trial court convicted and sentenced the accused-appellant under Section 376, IPC, to undergo 10 years simple imprisonment and a fine of Rs.2,000/- (Rupees two thousand); in default

of payment of fine, to further undergo one year's additional simple imprisonment.

The learned counsel for the appellant argued the appeal on merits, but, during the course of arguments, he rightly did not press it on merits in view of the statements of PW-11 Bhagwati (prosecutrix), PW-8 Balu Ram (father), PW-12 Smt. Shanti (mother), and PW-1 Dr. Sunita Jain, the medical-officer. The only contention raised by the learned counsel for the accused-appellant is that the appellant has already remained in jail for about four-and-half-year, therefore, his sentence of imprisonment may be reduced to a period of imprisonment already undergone by him. His alternative prayer is that in case this court does not agree with his submission and the sentence of imprisonment of the appellant is not reduced to a period of imprisonment already undergone by him, then at-least his sentence of imprisonment may be reduced reasonably.

The learned counsel for the appellant further contended that as per the relevant Rules, an accused gets the benefit of remission from the period of imprisonment when he is awarded rigorous imprisonment and the said benefit is not available in case an accused is awarded simple imprisonment by the court. In the present case, the appellant was awarded simple

imprisonment by the trial court, therefore, he will not get the benefit of remission from the period of imprisonment, therefore, whatever period of sentence is awarded by this Court may be awarded as rigorous imprisonment with a clarification that the period of imprisonment already undergone till now by the appellant will be treated as rigorous imprisonment for the purpose of grant of remission from the total period of imprisonment, by the jail authorities.

The learned Public Prosecutor has not seriously opposed the prayer of the learned counsel for the appellant for reduction of sentence of imprisonment and to convert the simple imprisonment into rigorous imprisonment.

I have considered the submissions of the learned counsel for both the parties.

The learned counsel for the appellant has not challenged the order of conviction of the accused-appellant passed by the Additional District & Sessions Judge (Fast Track) Beawar, vide its judgment and order dated 11.6.2003 in Sessions Case No.2/2003, therefore, it is not necessary to refer and discuss the facts of the case.

The trial court was right in convicting the accused-appellant in view of the prosecution evidence including the statements of PW-1 Dr. Sunita Jain, PW-8

Balu Ram, PW-11 Bhagwati and PW-12 Smt. Shanti.

So far as reduction of sentence of imprisonment awarded by the trial court against the appellant is concenred, I find this case to be a fit one to reduce the same.

In Prem Chand Vs. State of Haryana, AIR 1989 SC 937, in the peculiar facts and circumstances of that case, the Hon'ble Supreme Court reduced the sentence of imprisonment of ten years awarded under Section 376 (2) IPC, to a period of sentence of imprisonment of five years. The State of Haryana filed review petition before Hon'ble the Supreme Court in the above case and the same was dismissed. The decision of the Hon'ble Supreme Court in that review petition is reported in (1990) 1 SCC 249 (State of Haryana v. Prem Chand & Others).

In Ram Kumar Vs. State of Haryana – (2006) 4 SCC 347, their Lordships of the Hon'ble Apex Court reduced the sentence of seven years under Section 376, IPC, to a period of three years imprisonment. Para No.3 of the judgment reads as under:-

> "3. The appellant, aggrieved by the order passed by the High Court has filed the above appeal by way of appeal. We have been taken through the statement and evidence recorded by the Court. Our attention was also drawn to the judgment passed by both

> the Sessions Court as well as the judgment passed by the High Court. The learned counsel for the appellant drew our attention to the statement of the girl Bimla (PW-5) and also drew our attention to the evidence of the doctor. We have carefully analysed the evidence tendered by the prosecution. In our opinion, sufficient evidence was tendered by the prosecution to prove the guilt of the accused. However, at the time of hearing it is brought to our notice that the girl has now got married and living with her husband. The said statement is also ratified by the evidence of the father of the girl. Having regard to the peculiar facts and circumstances of the case, we are of the view that the sentence imposed by the Sessions Court and as affirmed by the High Court under Sections 366 and 376 of the Penal Code is on the highside. In our opinion, ends of justice would be amply met if we reduce the sentence to three years. We do so accordingly."

In the case of State of Chhattisgarh Vs. Lekhram (2006) 5 SCC 736 the Hon'ble Apex Court reduced the minimum sentence under Section 376, IPC, of seven years to a sentence of one-and-half-year imprisonment, already undergone by accused therein. Para 16 of the judgment reads as under:-

> "16. The prosecutrix was a mature girl. She was married.

> She spent a few months in her in-laws' place. The respondent was working in her house. They, thus, knew each other for a long time. The prosecution evidently could not prove its case that she was enticed away from the custody of her guardian by the respondent on a false plea that he would marry her. She denied the said suggestion as presumably she was aware that she being married, the question of her marrying the respondent again may not arise. She lived for some time with the respondent in a rented house. Both the courts proceeded on the basis that she was a consenting party. The occurrence took place in the year 1986. The respondent preferred an appeal before the High Court in the year 1987. The same remained pending for about 10 years. The special leave petition was filed by the State 230 days after the prescribed period of limitation for preferring such appeal. The delay in filing the special leave petition, however, was condoned. He is said to have remained in custody for about one-and-a-half years. In the peculiar facts and circumstances of this case and having regard to the facts that both the courts have arrived at the conclusion that she was a consenting party, in our opinion, it may not be proper to send the appellant back to prison."

After considering the submissions of learned counsel for both the parties as well as the facts and circumstances of the present case and keeping in view

the above referred judgments of the Hon'ble Apex Court, I think it fit and proper that ends of justice will meet in case the sentence of 7 years rigorous imprisonment is awarded against the accused-appellant.

Consequently, the appeal of the appellant is partly allowed. The impugned judgment passed by the trial court is modified. The conviction of the appellant under Section 376, IPC, is maintained, but his sentence of imprisonment passed by the trial court is reduced and altered from 10 years simple imprisonment to 7 years rigorous imprisonment and a fine of Rs.2,000/- (Rupees two thousand); in default of payment of fine, to further undergo 20 days rigorous imprisonment.

The concerned jail authorities are directed to give the benefit of remission from total period of sentence of imprisonment to the appellant and for that purpose the custody of the appellant relating to simple imprisonment will be treated as rigorous imprisonment.

(Narendra Kumar Jain) J.

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